No. SC93331

IN THE SUPREME COURT OF MISSOURI

AAA Laundry & Linen Supply Co.,

Respondent,

v.

Director of Revenue,

Appellant.

Appeal from the Administrative Hearing Commission of Missouri
The Honorable Sreenivasa Rao Dandamudi, Commissioner

Brief of The Superior Linen Supply Co., and The Medical Laundry Service, LLC as *Amici Curiae* in Support of Respondent

---

Anthony W. Bonuchi
POLSINELLI PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
(816) 421-3355; FAX (816) 374-0509

Attorney for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

OTHER: STATUTES, RULES, REGULATIONS, CONSTITUTIONAL PROVISIONS

INTEREST OF AMICUS CURIAE AND CONSENT OF THE PARTIES

Amici The Superior Linen Supply Company and The Medical Laundry Services LLC are large, family owned companies based in Kansas City, Missouri. They are part of the same corporate family, Incorporated in Missouri, which, beginning with Superior Linen, has been in the commercial, industrial laundry and linen supply business for over 100 years.

Superior Linen and Medical Laundry follow the same basic business model as respondent AAA Laundry & Linen Supply Company. They lease textiles like towels, sheets, table cloths, uniforms, aprons, mats, gowns and scrubs to their customers. The *amici* serve mainly large non-profit hospitals and hotels while AAA Laundry's business focuses more on industrial customers' needs, primarily uniforms.

The *amici* periodically exchange soiled and damaged linens with clean or new ones. The dirty laundry then goes through what is called the Health Care Laundering Process and the cycle begins anew. Through this arrangement, the customer always has clean linen products without having to buy them or maintain a cumbersome and costly in-house laundry facility.

Missouri law requires companies to pay taxes on the products they purchase or, if they are leased like the linens at issue here, charge the

customer taxes and remit those payments to the State. Like many large laundries, the *amici* elects the latter. They also claim an exemption from sales and use taxes on cleaning products used in their laundering process.

Appellant, the Missouri Department of Revenue asserts the Administrative Hearing Commission erred in upholding AAA Laundry's claim that their cleaning products are exempt from state taxes under §144.054.2. The *amici*, like similarly situated large industrial laundries, have an interest in the outcome of this appeal. This brief will support AAA Laundry's position and shed light on how reversing the Commission would impact Missouri's tax policy and the laundry business generally.

All parties have consented to the filing of this brief as provided by Mo. R. Civ. P. 84.05(f)(2).

ARGUMENT

I. Chemicals used in the industrial laundry process are exempt from taxes under Section 144.054.2.

The Administrative Hearing Commission determined that the use of industrial washing machines to clean and sanitize linens that companies like AAA Laundry lease to their customers is "processing" and thus the soap, detergent, and other sanitizing chemicals purchased outside Missouri and used in that process are exempt from sales and use taxes under Section 144.054.2. (LF 71). This common-sense ruling is consistent with the plain language of the statute and the legislature's intentions. The Commission's decision should be affirmed.[1]

The specific exemption at issue here states that "electrical energy and gas . . ., chemicals, machinery, equipment, and materials used or consumed in the manufacturing, processing, compounding, mining, or producing of any product" are exempt from state sales and use taxes. R.S.Mo. §144.054.2. This provision applies if the taxpayer is using (1) chemicals or materials, (2) in the "processing," of (3) "any product." *Id.* There is no dispute the cleaning supplies here are "chemicals" and

[1] The *amici* are not required to use the wastewater chemicals at issue in Point I of the Director's brief and thus have nothing to add to that discussion.

"materials." And all parties agree that linens are a "product" under the statute. The sole question on appeal then is whether using the cleaning supplies to launder the rented linens is "processing."

The first goal of statutory construction is to give meaning to the legislature's intentions. *Id.* at 4. Where possible, words should be given their ordinary meaning. *MC Dev. Co. v. Cent. R-3 Sch. Dist. Of St. Francois County*, 299 S.W.3d 600, 604 (Mo. banc 2009). If there are ambiguities, courts should interpret the statute as a whole, using cannons of statutory construction where necessary. *Aquila Foreign Qualifications Corp., v. Director of Revenue*, 362 S.W.3d 1, 4 (Mo. banc 2012).

A straightforward reading of Section § 144.054 shows that large industrial laundries like the *amici* and AAA Laundry are engaged in processing as defined by the statute. The statute itself defines processing as "any mode of treatment, act, or series of acts performed upon materials to transform or reduce them to a different state or thing . . .." R.S.Mo. § 144.054.1(1). The Commission determined that AAA Laundry's business falls squarely under this definition because it uses soaps and detergents to "transform" the linens from a soiled "state" to a clean and sanitized "state." (LF 71).

This Court has had only one occasion to interpret the definition of processing in Section 144.054. *See Aquila*, 362 S.W.3d at 4. In *Aquila*, the Court noted that the term processing had an "industrial connotation," which did not encompass "food preparation for retail consumption." *Id.* at 5. The Court thus found that electricity used to power food preparation equipment was not exempt from taxation. *Id.*

But, contrary to the Director's suggestion, *Aquila* is of little use here. *Aquila* turned on the decidedly non-industrial nature of food preparation. *Aquila*, 362 S.W.3d at 5. On the other hand, the activity at issue in this case is unquestionably industrial.

The Director gives short shrift to the statutory definition's actual words and contends that "processing" is actually best defined by looking to old cases that predate Section 144.054. (App. Br. at 22-23). Those cases equated "processing," as used in Section 144.030, to "manufacturing," which also appeared in the same clause of that statute. *See, e.g., Mid-America Dairymen, Inc., v. Director of Revenue*, 924 S.W.2d 280, 283 (Mo. banc 1996); *HGP Indus., Inc. v. Director of Revenue*, 924 S.W.2d 284, 285-86 (Mo. banc 1996). With no statutory definition to guide them, those courts found the two words were essentially the same and that both were limited to activity that created "something new." *See Mid-America Dairymen*, 924 S.W.2d at 283.

Cases like *HGP Industries* have no bearing on the interpretation of Section 144.054. To begin with, they were all decided before the statute at issue here was enacted. Moreover, unlike those dated cases, the Commission was not writing on a blank slate. Both Section 144.030 and Section 144.054 now actually define "processing." The Director's cases interpreting the definition of manufacturing are thus unhelpful here.

Courts are bound to give each word in a statute meaning. *Utility Service Co., Inc. v. Department of Labor and Industrial Relations*, 331 S.W.3d 654 (Mo. banc 2011). Statutory terms should not be dismissed as mere surplusage. *Id.* Viewed against this backdrop, the legislature's use of the term "processing" must have meant something distinct from "manufacturing." This is especially true here, where the General Assembly specifically included a definition for "processing," but not "manufacturing" in Section 144.054.1, effectively proving it intended distinct meanings for the two terms.

It is true, as the Director points out, courts attribute knowledge to the legislature of past judicial determinations when interpreting statutes. But that doctrine cuts against the Director here. Put simply, if the General Assembly meant to limit the term "processing" to actions that resulted in a "new product", it would have said so.

The fact that the definition of "processing" in Section 144.054.1 makes no mention of "something new" or a "new product" defeats the Director's contention that the legislature merely adopted the "something new" definition of processing urged by the Director. The statute instead speaks broadly of transforming materials into a different state. *See E&B Granite, Inc. v. Director of Revenue*, 331 S.W.3d 314, 317 (Mo. banc 2011) (noting that "section 144.054.s is broader than 144.030.2(2)"). The argument that all the legislature did was codify the definition used in cases like *Mid-America Dairymen* is thus unavailing.

Putting aside the plain language used by the General Assembly, this Court has effectively declared that industrial laundry services are engaged in processing when they clean their laundry. As the Director notes: "washing [laundry] is not manufacturing." (App. Br. at 37-38 (*quoting L & R Egg Company, Inc., v. Director of Revenue*, 796 S.W.2d 624, 627 (Mo. banc 1990)). Rather, in *Unitog Rental Services, Inc. v. Director of Revenue*—relied on heavily by the Director—large industrial laundry companies were described by this Court as "processing," not "manufacturing." 779 S.W.2d 568, 570 (Mo. banc 1989) (finding washing machines were not used in manufacturing for tax purposes). The Court said the same thing in *L & R Egg Company,* 796 S.W.2d at 627 (finding that the "egg *processing* system" was not manufacturing (emphasis

added)). If washing laundry on an industrial scale was "processing" in *Unitog*, it should be considered 'processing" under Section 144.054.

If this Court's use of the terms processing and manufacturing in *Unitog* and *L&R Egg Company* proves nothing else, it shows that there is indeed a difference between the two concepts. And by including both words in Section 144.054.2 after cases like *Unitog* and *HGP Industries* were decided, the General Assembly intended distinct applications. The Commission was thus correct to reject the Director's strained reading of Section 144.054 and its decision should be affirmed.

II. The Commission's decision makes good policy sense.

The Commission's interpretation of Section 144.054.2 is not only faithful to the statute's plain language, it makes for good policy. Allowing large industrial laundries to claim tax exemptions for their cleaning supplies encourages them to make decisions that maximize tax revenue generated by this industry. Beyond that, these exemptions promote efficiencies that benefit the economy and, indirectly, the environment.

Superior Linen and Medical Laundry, like most other large industrial laundries (including AAA Laundry), pay no sales taxes on the linen products they purchase. Nor do they pay sales or use tax on the purchase of cleaning supplies used to launder those products. The *amici* instead charge and remit 6.6% sales taxes on the payments made by

their customers. The two companies estimate they will remit to the State approximately $52,000 in sales taxes in 2013. When all the large laundries operating in Missouri are taken into account, these multi-year lease agreements produce millions in tax revenue for the State.

The Commission's decision maintains the status quo and encourages companies to continue charging and remitting sales taxes. But without tax exemptions like Section 144.054.2, industrial laundries may well make different business decisions. Companies could decide to simply pay taxes on their products instead of risking costly audits and litigation with the State. Laundries would then no longer need to charge their customers sales tax under Missouri law. According to the *amici*, this would cut the tax revenue generated by the industrial laundry industry in half. And for other industrial launders and textile rental companies the reduction could be as high as 80%.

Apart from choking off tax revenue, reversing the Commission's ruling could well lead to other inefficiencies. The economy and environment are both well-served when hospitals and hotels contract with companies like Superior Linen and Medical Laundry to supply clean, sanitary linen products. Simply put, professional, industrial laundries do the job cheaper and faster than their customers; often reducing energy and water by consumption by 75% per unit.

What is more, industrial laundries are especially attuned and equipped to institute and follow environmentally safe practices. Superior Linen and Medical Laundry, for example, make it a point to use detergents and other chemicals that are environmentally friendly. Along the same lines, because it is their sole focus, laundries have greater incentive to use energy efficient machines and plants than might some of their customers.

Finally, the Commission's decision promotes fairness in Missouri's economy. This Court recognized in *E&B Granite*, 331 S.W.3d at 317, that § 144.054.2 is broader than §144.030 and thus by definition creates more tax exemptions. One of the clear purposes of this statute is to level the playing field; to give companies like AAA Laundry and the *amici* the same tax advantages that manufacturing, mining, and other companies enjoy. Said differently, it puts all "industrial-type" companies on the same ground.[2] As the Court has noted, the words "manufacturing",

[2] This also proves incredible the Director's fear that the Commission's ruling will usher in an "influx" of litigation over Section 144.054.2. *Aquila's* holding that Section 144.054.2 is meant to apply in industrial settings defeats any argument that this exemption should apply to supplies used in all manner of "mundane activities involving mere cleaning," regardless of the outcome of this case. (App. Br. at 37).

"compounding", "mining", "producing", and "processing" are all "industrial-type terms" that have an unmistakable "industrial connotation." *Aquila*, 62 S.W.3d at 5. The Commission's common-sense decision here carries out the legislature's desire to apply the tax exemption in Section 144.054(2) to all "industrial" companies.

CONCLUSION

For the foregoing reasons, the Commission's decision should be affirmed.

Respectfully submitted,

/s/ Anthony W. Bonuchi

Anthony W. Bonuchi
POLSINELLI PC
900 W. 48th Place, Suite 900
Kansas City MO 64112
(816) 421-3355
FAX (816) 374-0509
Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the forgoing brief complies with the requirements of Mo. R. Civ. P. 84.06 (a) and (b) and, according to the word count function of Microsoft Word by which it was prepared, it contains 2,289 words, exclusive of the cover, the Certificate of Service, this Certificate of Compliance, and the signature block.

/s/ Anthony Bonuchi

Anthony W. Bonuchi
POLSINELLI PC
900 W. 48th Place, Suite 900
Kansas City MO 64112
Kansas City, Missouri 64105
(816) 421-3355
FAX (816) 374-0509

Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2013, the above and forgoing was filed using the state of Missouri's electronic filing system, which automatically served:

Thomas E. Roszak
John F. Wilcox
Dysart, Taylor, Cotter, McMonigle, & Montemore, PC
4420 Madison Ave.
Kansas City, MO 64111
troszak@dysarttaylor.com

Attorney for Respondent

Jeremiah J. Morgan
Deputy Solicitor General
PO Box 899
Jefferson City, MO 65102
Jeremiah.Morgan@ago.mo.gov

Attorney for Appellant

/s/ Anthony Bonuchi
Attorney for Amicus Curiae